## **Debbie Beadle**

From: Carol <carol@aramburu-eustis.com>

**Sent:** Monday, June 3, 2013 3:14 PM

To: ECA

Cc: ECA; Evan Maxim; Melonie Anderson; Rick Aramburu

Subject: City of Sammamish proposed ECA Update

**Attachments:** 2013-6-3 Pereyra ECA Comments.pdf

Sammamish SEPA Responsible Official, and Evan and Melonie:

We've cc'd Evan and Melonie with Rick's letter (dated June 3, 2013) on Mr. Pereyra's behalf because there is a new ECA comment address on your website, different than that we were given previously. Please ensure that this letter is delivered to the SEPA Responsible Official responsible for reviewing comments on the proposed updates to the Environmentally Critical Areas regulations.

Thank you, Carol Cohoe ARAMBURU & EUSTIS, LLP 720 Third Avenue Pacific Building Suite 2112 Seattle, WA 98104-1860 Telephone (206) 625-9515 Facsimile (206) 682-1376

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June 3, 2013

SEPA Responsible Official City of Sammamish Community Development Department 801 - 228th Ave. S.E. Sammamish, Washington 98075

ECA@Sammamish.US

Re:

Corrected Determination of Non-significance (DNS) and Adoption of Existing Environmental Document for ECA Amendments to the Sammamish Municipal Code

## Dear Responsible Official:

This office represents Wally Pereyra, whose address is 148 East Lake Sammamish Parkway S.E.. Mr. Pereyra's property is located along Ebright Creek at the base of the East Lake Sammamish Plateau. Mr. Pereyra will be significantly affected by possible amendments to the Environmentally Critical Area (ECA) regulations which are now being considered by the City Council.

We have reviewed the "Corrected Determination of Non-significance (DNS) and Adoption of Existing Environmental Documents" for ECA Amendments that was issued on May 20, 2013 (with comments due by June 3, 2013). We find that the DNS is deficient and that a full environmental impact statement should be prepared for the subject ECA Amendments.

The DNS in fact adopts Draft and Final Supplemental Environmental impact statements for the Sammamish Comprehensive Plan from 2003, which in turn relied on an environmental impact statement prepared in 1992/93 by King County for the East Sammamish Community Plan Update. From review of both the 1992/93 and 2003 environmental impact statements, it is clear that King County and the City of Sammamish considered the adoption of their planning documents as actions significantly affecting the environment. However, the current document is a DNS which contends that the ECA amendments are not environmentally significant. We strongly

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disagree that the adoption of the ECA amendments would not have a significant impact on the environment.

At the outset, we note that the environmental documents adopted relate to comprehensive planning, not the update of ordinances to regulate environmentally critical areas. Further, the whole purpose of environmental review under the SEPA regulations is to address proposals for action, whether on a project or non-project basis. There is no analysis of the environmental impact of the current ECA proposal, which is apparently (though not stated as such) the Sammamish Planning Commission (SPC) Recommendation for the ECA update.

It is likely that if the planning commission proposal is adopted, there will be serious compromises to the current environmental protections in the City. These include allowing such activity as pilot programs for the EHNSWB, greater allowance of development near wetland and streams, reduced setbacks and similar activity. This activity would have city-wide application and thus would impact a large geographic area.

Proposals are also made within the draft ECA regulations to include pipelines to Lake Sammamish, which will require shoreline substantial development and NPDES permits. Such development could have a major impact on water drainage and quality, environmentally sensitive wetlands, wildlife habitat, open spaces, and other resources. However, there is no analysis of these impacts in the adopted documents. The DNS contends that the "documents listed above will help meet the environmental review needs for the current proposal and will accompany the proposal to the decision maker." However, again there is no analysis of how the specific ECA amendment proposals will impact the elements of the environment in the SEPA Regulations. In particular, there is no consideration of cumulative impacts from the multiple changes in existing regulations, which generally reduce existing environmental protections.

The obligations of the City in conducting environmental review of a non-project action such as the ECA update are to review the kinds and types of development that may occur if the ECA updates, as currently proposed by the Planning commission, are adopted. However, the environmental checklist prepared for this action consistently indicates "n/a" (not applicable) to substantially all questions related to environmental impact. In the "Supplemental Sheet for Non-project Actions" at pages 11-12 of the environmental checklist, the following phrase is used throughout: "The code amendments themselves would not lead to any such impacts." See answers to questions 1, 2, 3, 4, 5, 6 and 7. However, Washington caselaw is clear that the SEPA review must consider the anticipated consequences and activities of non-project actions. As indicated in *King County v. Washington State Boundary Review Bd. for King County*, 122 Wash.2d 648, 665-666, 860 P.2d 1024, 1034 (1993), SEPA review must consider any development that may follow the adoption of the ECA Amendments. There, the Boundary Review Board claimed that the action considered was just an

annexation of territory. However, the court rejected that proposition:

We therefore hold that a proposed land-use related action is not insulated from full environmental review simply because there are no existing specific proposals to develop the land in question or because there are no immediate land-use changes which will flow from the proposed action. Instead, an EIS should be prepared where the responsible agency determines that significant adverse environmental impacts are probable following the government action.FN10

FN10. Even where an EIS is required, a lead agency may still employ the "non-project proposal" provisions of the SEPA Rules. Under these provisions, agencies can limit the scope of an EIS to "the level of detail appropriate to the scope of the non-project proposal". WAC 197-11-442(2). Uncertainties in development plans can thereby be dealt with by the lead agency without violating the mandate of SEPA.

122 Wn.2d at 664-665. In the present case, the "pilot program" portion of the ECA amendment specifically calls out the approval of up to nine subdivisions in the environmentally critical areas, which individually and/or cumulatively may create significant impacts. Indeed, the property owners that most strongly supported the "pilot program" are likely the applicants of these subdivisions.

That some of the results of the ECA measure would be possibly beneficial to the environment is not the standard for avoiding environmental review. See WAC 197-11-330(5) ("A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts").

In summary, the City has erred in the issuance of a DNS for the ECA Amendment proposal for the reasons stated above. The responsible official should withdraw the DNS and enter a determination of significance. Thereafter, the City should immediately begin preparation of an environmental impact statement to analyze the environmental impacts from the ECA Amendments.

Sincerely yours,

Aramburu & Eustis, LLP

J. Richard Aramburu

JRA:cc

cc: Client